

103 KAR 18:150. Employer's withholding reporting requirements.

RELATES TO: KRS 131.155, 141.330

STATUTORY AUTHORITY: KRS 131.130, 131.155, 141.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.155(3)(c) requires the department to promulgate administrative regulations establishing electronic fund transfer payment requirements for the payment of taxes and fees administered by the department. KRS 141.330(1) authorizes the department to promulgate administrative regulations to require employers to remit the tax withheld under KRS 141.310 and 141.315 within a reasonable time after the payroll period or other period. This administrative regulation prescribes the reporting and payment requirements for employers withholding Kentucky income tax.

Section 1. Definitions. "Lookback period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 2020 is the period beginning on January 1, 2019 and ending on December 31, 2019.

Section 2. Reporting and Payment Requirements. Unless otherwise required or allowed by Section 3 of this administrative regulation:

(1)(a) Any employer who withheld income tax of less than \$400 during the lookback period shall report and pay the tax annually using Revenue Form K-3, "Employer's Annual Reconciliation Return."

(b) Revenue Form K-3 and the income tax withheld shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(2)(a) Any employer who withheld income tax of \$400 or more, but less than \$2,000 during the lookback period shall report and pay the tax quarterly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

(b) Revenue Form K-1 and the income tax withheld each quarter shall be filed and paid on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31).

(c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the fourth quarter shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(3)(a) Any employer who withheld income tax of \$2,000 or more, but less than \$50,000 during the lookback period shall report and pay the tax monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

(b) Revenue Form K-1 and the income tax withheld each month shall be filed and paid on or before the 15th day of the following month for each of the first eleven (11) months of the calendar year.

(c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the last month shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(4)(a)1. Except as provided in paragraph (b) of this subsection, any employer who withheld income tax of \$50,000 or more during the lookback period shall report and pay the tax twice monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

2. Revenue Form K-1 and the income tax withheld during the first through the 15th day of each month of the calendar year shall be reported and paid on or before the 25th day of that month.

3. Revenue Form K-1 and the income tax withheld during the 16th through the last day of each month of the calendar year shall be reported and paid on or before the tenth day of the following month.

4. However, Revenue Form K-1 and the income tax withheld during the first calendar month shall be filed and paid on or before the tenth of the following month (February 10), and the income tax withheld for the period beginning December 16 and ending on December 31 shall be paid with Revenue Form K-3, "Employer's Annual Reconciliation Return," which shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(b) Any employer who withheld income tax during the lookback period of \$50,000 or more and whose average monthly income tax withheld during the lookback period is more than \$25,000 shall pay the tax withheld by electronic funds transfer.

(5) The department shall provide written notification of the reporting and payment requirements to any employer who does not have a lookback period.

(6) For periods beginning on or after January 1, 2021, twice monthly and monthly filers shall electronically file and pay the income tax withheld.

(7) For periods beginning on or after January 1, 2022, all filers shall electronically file and pay the income tax withheld.

Section 3. Electronic Fund Transfers. (1) If, on any day during a reporting period, an employer accumulates \$100,000 or more of total income tax withheld before a current electronic transaction is otherwise due, the employer shall pay the tax withheld by electronic funds transfer. The employer shall electronically transfer the tax withheld as provided by 103 KAR 1:060 by the close of the first banking day after the first day the employer accumulates \$100,000 or more of income tax withheld.

(2)(a) Any employer not required to pay the tax by electronic funds transfer may make a written request to the department and, if approved by the department, shall be subject to the same requirements as those employers required to electronically transfer the tax.

(b) Any employer who may pay by electronic funds transfer shall continue to pay the tax withheld by electronic funds transfer until the department authorizes the employer in writing to change his reporting and payment method.

Section 4. Authority to Change Reporting and Payment Requirements. Pursuant to the provisions of Section 2 of this administrative regulation:

(1) The department may change annually the reporting or payment requirements of any employer upon written notice to the employer.

(2) Upon written request by any employer and approval by the department, the department may change the reporting or payment frequency prescribed by this administrative regulation.

Section 5. Penalties and Interest. Any employer who fails to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183. (21 Ky.R. 144; 912; eff. 9-12-1994; 45 Ky.R. 1075, 1520; eff. 1-4-2019; 46 Ky.R. 1593; eff. 5-5-2020.)